

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2012-107176-001 DT

07/20/2016

HONORABLE WARREN J. GRANVILLE

CLERK OF THE COURT
B. Navarro
Deputy

STATE OF ARIZONA

PATRICIA L STEVENS
MARY-ELLEN WALTER
COLLEEN CLASE

v.

MICHAEL LEE CRANE (001)

HERMAN ALCANTAR JR.

CAPITAL CASE MANAGER

MINUTE ENTRY (CAPITAL CASE)

Defendant seeks *habeas corpus* relief on grounds that his current custody status is violating his 2nd Amendment right to bear arms. Defendant claims that jail rules that prohibit him from possessing a weapon, prison rules forbid his possession of a weapon, and a law stating that a felony conviction would prohibit him possessing a weapon all violate the 2nd Amendment and, therefore, making his current status of pending criminal charges unconstitutional under the 2nd, 9th, and 10th Amendments. In addition, under the theory that a gun is property, Defendant also claims a violation of the 5th Amendment by being deprived of a gun as property without due process.

Defendant is correct in recognizing that jail policies and prison policies and A.R.S. § 13-3881 would prohibit an inmate, prisoner, or felon whose rights had not been restored to possess a weapon. Defendant is incorrect to claim that such prohibition violates the 2nd Amendment.

Besides being charged with serious offenses that have caused Defendant to be remanded pending trial, the State has alleged that Defendant has suffered two felony convictions and has not yet had his rights restored.

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In *District of Columbia v. Heller*, 554 U.S. 570, 572 (2008), the Supreme Court held that an individual had a right to possess a weapon, but their ruling had limits:

Like most rights, the right secured by the 2nd Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators, and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. See, e.g., *Sheldon*, in 5 Blume 346; Rawle 123; Pomeroy 152-153; Abbott 333. Although we do not undertake an exhaustive historical analysis today of the full scope of the 2nd Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

Id. at 624-25.

In the recent case of *Voisine v. United States*, 579 U.S. ___, 2 (2016), the Supreme Court held that a person convicted of a domestic violence misdemeanor could be prohibited from possessing a weapon. Laws that prohibit a felon whose rights have not been restored from possessing a weapon have been upheld repeatedly. *United States v Waller*, 218 F3d 856 (8th Cir. 2000); *United States v. Baer*, 235 F3d 561 (10th Cir. 2000); *United States v Darrington*, 351 F3d 632 (5th Cir. 2003); *Van Der Hule v. Holder*, 759 F.3d 1043 (9th Cir. 2014). See also, *State v. Rascon*, 110 Ariz. 338, 519 P.2d 37 (1974)

A person's 2nd Amendment's rights are not the only rights that are lawfully forfeited by reason of arrest and conviction. The most fundamental of rights, the right to vote, may lawfully be forfeited by a felony conviction. *Richardson v. Ramirez*, 418 U.S. 24 (1974); *Harvey v. Brewer*, 605 F.3d 1067 (9th Cir. Ariz. 2010). Similarly, the full protections afforded by the Fourth Amendment are forfeited to a person on probation *Griffin v. Wisconsin*, 483 U.S. 868 (U.S. 1987); *United States v. Knights*, 534 U.S. 112 (2001), or on parole. *Samson v. California*, 547 U.S. 843 (2006). 1st Amendment rights to travel or associate freely are forfeited while the person is lawfully an inmate or prisoner. Defendant's references to the 9th and 10th Amendments are mooted by reason that his 2nd Amendment rights are not violated.

To the extent that Defendant claims his 5th Amendment right to not be deprived property without due process that due process is being afforded by reason of his representation of appointed counsel ardently advocating on his behalf.

To the extent that Defendant's pleading again challenges this Court's jurisdiction. As this Court has repeatedly ruled, this Court has jurisdiction over Defendant's matter because he is

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a defendant in a criminal case. A “defendant” is a person against whom a crime has been alleged. A.R.S. § 13-105(29). Under the Arizona Constitution, the Superior Court has original jurisdiction over all felony cases. Art.VI, Sec. 14. The Constitution also delegates to the Legislature to enact all statutory laws. Art IV, Sec 1. These statutes include provisions that define the elements of a crime – Title 13, as well as the power of the county attorney to prosecute those crimes. A.R.S. 11-532. The “State” is the party that initiates criminal offense actions. A.R.S. 13-108.

Defendant again cites to the provisions of the United States Maritime Code. By its own terms, the United States Maritime Code is limited to actions occurring on the high seas or navigable waterways of the United States. 18 USCA 2290. It does not apply to a state criminal proceeding.

As this is a criminal case, the procedures are governed by the United States and Arizona Constitutions, Arizona statutes, Arizona Rules of Criminal Procedure, and Arizona Rules of Evidence. Defendant is properly before this Court as a defendant charged with very serious criminal offenses. His case will be governed by the relevant provisions of the United States and Arizona Constitutions, the Arizona Criminal Code, the Arizona Rules of Criminal Procedures, and the Arizona Rules of Evidence. This Court has the authority and obligation to preside over these criminal proceedings.

For the foregoing reasons,

IT IS ORDERED denying Defendant’s *pro se* request for *habeas corpus* relief.